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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Second periodic reports of States parties due in 1998

Addendum

MAURITIUS

[8 June 1998]

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* The initial report submitted by the Government of Mauritius is contained in document CAT/C/24/Add.1; for its consideration by the Committee, see documents CAT/C/SR.212, 213 and the Official Records of the General Assembly, Fiftieth session, Supplement No. 44 (A/50/44, paras. 132-145).

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I. INFORMATION OF A GENERAL NATURE

1. Since the presentation of its initial report by Mauritius, the death penalty was abolished following the passing of the Abolition of Death Penalty Act in December 1995. In the same year, section 16 of the Constitution was amended to prohibit any discrimination by laws or public authorities on the ground of sex. Further, national elections were held in December 1995 and a new Government, led by Prime Minister Dr. Navin Ramgoolam, assumed office. The new Government has emphasized its commitment to the respect and promotion of human rights. In that context, Government has created a portfolio for human rights, for which the Attorney-General and Minister of Justice is responsible.

2. In October 1996, Mauritius hosted the twentieth session of the African Commission on Human and Peoples' Rights, which coincided with the tenth anniversary of the African Charter on Human and Peoples' Rights and was an excellent opportunity for Mauritius, as host country, to reaffirm its commitment to the promotion and protection of human rights.

3. At the request of the Government of the Republic of Mauritius, the High Commissioner/Centre for Human Rights (HC/CHR) conducted a needs assessment mission to the Republic of Mauritius from 27 November to 6 December 1996, funded by the United Nations Voluntary Fund for Technical Cooperation in the Field of Human Rights. Following the recommendations made by the mission, the Government is introducing in the next parliamentary session the Protection of Human Rights Bill. The Bill provides for the setting up of a National Human Rights Commission with the following functions:

(a) To inquire, of its own motion or on the basis of a communication from any individual or any other person acting on his behalf, into allegations that anyone's human rights have been or are likely to be violated by and act or omission of any person, and recommend appropriate remedial measures;

(b) To visit any prison or other places of detention under the control of the State to study the living conditions of the inmates, and make recommendations thereon;

(c) To review the safeguards provided by or under the Constitution or any other enactment for the protection of human rights and recommend measures for their effective implementation;

(d) To review the factors or difficulties that inhibit the enjoyment of human rights and recommend appropriate remedial measures;

(e) To spread human rights literacy among various sectors of society and promote awareness of the safeguards available for the protection of these rights, through publications, the media, seminars or any other means;

(f) To encourage the efforts of non-governmental organizations and institutions working in the field of human rights;

(g) To resolve complaints by a conciliatory procedure;

(h) To exercise such other functions as the Commission may consider to be conducive to the promotion and protection of human rights.

4. A training programme for the police has been established in collaboration with the Attorney-General's Office to sensitize the Police Department further on international human rights standards and law enforcement. The programme will also cover the United Nations Code of Conduct for Law Enforcement Officials, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the Standard Minimum Rules for the Treatment of Prisoners.

5. The existing Extradition Act of 1970 is now being amended to incorporate article 3 of the Convention.

6. Amnesty International (Mauritius) is at present (April 1998) hosting a workshop on the theme of human rights in Mauritius. Representatives of the Police Department, prisons authorities, primary and secondary school and trade unions are among the participants. Several prominent international experts in the field of human rights addressed the participants. During the workshop the representative of the Ministry of Education confirmed that the Ministry intended to introduce human rights as a subject in the school curriculum.

7. To mark the fiftieth anniversary of the Universal Declaration of Human Rights, the Government as well as non-governmental organizations are organizing workshops and exhibitions and a campaign primarily aimed at sensitizing students. A plaque inscribed with the principles of the Universal Declaration will be unveiled on the newly developed site of the Waterfront in Port Louis, the capital of Mauritius.

8. The present report was communicated to the Indian Ocean Institute for Human Rights and Democracy. The comments of the President of the Institute are found at annex 1 (see list of annexes).

II. INFORMATION RELATING TO THE ARTICLES IN PART I OF THE CONVENTION

Articles 1, 2 and 4

9. Acts of torture, as well as attempts at and acts of complicity in torture, are generally prohibited under the Constitution and the Criminal Code, although there is no specific offence of torture (as defined in article 1 of the Convention) in the laws. Acts of torture by which severe mental anguish is intentionally inflicted on a person are not offences under Mauritian criminal law. The aggrieved party in the latter case has nevertheless the option of instituting a civil action in damages to obtain appropriate compensation for interference with his or her rights.

10. Under article 86 of the Criminal Code, a public officer or person appointed by the Government or the police, acting in the discharge of his functions or for the purpose of discharging such functions who, without lawful reason, uses or causes to be used any violence towards any person is, according to the nature and extent of the violence used, liable to double the punishment which would have been incurred by any other person guilty of the like crime or misdemeanour.

11. The forthcoming establishment of the National Human Rights Commission (see para. 3 above) is seen as an important step in the development of the protection of human rights. The Commission will be independent in that it will not be under the control of any person or authority in the performance of its duties. It will provide an individual with additional means to seek redress if he or she is subjected to torture or runs the risk of being extradited to a State where there are reasonable grounds to believe that he or she would be subjected to torture. The power conferred on the Commission to inquire into a case of violation of human rights is without prejudice to the jurisdiction of the courts or the power conferred on the Director of Public Prosecutions or Service Commissions under the Constitution. Service Commissions deal, inter alia, with disciplinary matters involving public officers.

12. The Commission will also have the power to inquire into cases of police brutality and report to the Director of Public Prosecutions. At present, such cases are inquired into by an investigative unit forming part of the police force. As pointed out in the initial report, those inquiries are not perceived by some as being impartial.

Article 3

13. As mentioned at paragraph 5 above, the Extradition Act will be replaced by a new Act which will, inter alia, incorporate article 3 of the Convention.

Article 5

14. A Mauritian court already has jurisdiction to try an offence committed within the jurisdiction of Mauritius or on board a ship or aircraft registered in Mauritius. The position of the reporting State in relation to article 5 has therefore remained unchanged.

Article 6

15. Where a person is suspected of having committed, or is likely to have committed, or intends to commit, a crime including physical acts and ill-treatment that fall under the heading of "torture" in the Convention, that person may be deprived of his liberty. The authorities must, before imposing any restriction on that person's liberty, ensure strict adherence to the provisions of the law which are applicable under the Constitution, the Bail Act, the Criminal Procedure Act and the District and Intermediate Courts (Criminal Jurisdiction) Act. The Extradition Act is applicable if the person is likely to be extradited.

16. Before any action is triggered, the police has to have a reasonable suspicion that the person has committed (or is likely to, or intends to commit) a crime. Pursuant to article 11 of the Code of Criminal Procedure a police officer may effect the arrest of a suspect where he is in possession of a warrant issued by a magistrate authorizing him to do so. In circumstances where a crime is being committed or attempted to be committed, a private person or a police officer may arrest the offender without a warrant.

17. Immediately upon arrest the suspect must be informed of his right to legal counsel and of the nature of the criminal offence of which he is suspected. He has the right to use the telephone to contact his relatives or counsel. Furthermore, he must be informed of his right not to answer any questions. The suspect must be given access to his counsel to give instructions to the latter. Since December 1994, a Charter containing rights to persons held in police custody has been distributed at police station level to inform detainees of their rights.

18. In June 1997 the case of The State v. M.A. Coowar (annex 2) was referred to the full bench of the Supreme Court to decide on the legal obligation of the police under sections 3 and 5 (3) (b) of chapter II of the Constitution (see annex 3) to inform an accused party who is in police custody of his right to counsel. The Court held that the right of a person in police custody to consult a legal representative of his choice enshrined in section 5 (3) of the Constitution includes, or is deemed to include, the right to be informed about that right. It further held that the right to communicate with a legal adviser is capable in some situations of being of little value if the person is not informed of that right.

19. After the arrest of a suspect, section 13 of the District and Intermediate Court (Criminal Jurisdiction) Act requires the officer to bring the party arrested to jail or before a magistrate, according to the import of the warrant issued by the magistrate. The magistrate decides whether the arrest was lawful or continued detention is necessary. The Bail Act 1989 governs the detention and release of detainees and provides, inter alia, that every detainee shall be brought before a magistrate within a reasonable time of his arrest or detention, and that a detainee shall not be entitled to be released on bail where:

(a) He has broken any condition of bail;

(b) He has not complied with any other condition upon which he has been released;

(c) He is not likely to abide by the conditions of his bail, if released;

(d) His continued detention is necessary:

(i) For his own protection;

(ii) For the protection of the public or any likely witness or any evidence;

(iii) For his own welfare, if he is a child or a young person;

(iv) For the reason that it would not be practicable to complete the police inquiry if he is released;

(v) In view of the seriousness of the offence and the heavy penalty provided by law;

(vi) In view of his character and antecedents; or

(vii) In view of the fact that he is a fugitive from justice.

20. The Supreme Court has observed in the case of Sheriff v. District Magistrate of Port Louis (1989) MR 260 that it is only "in exceptional circumstances that the liberty of the subject can be subordinated to the greater needs of society requiring the forfeiture of his freedom. ... Detention is the ultimate weapon that the authorities should resort to when everything else has failed."

21. In DPP v. IOIB and Shanto (1989) MR 110, reference is made to the practice of entering a provisional information when a suspect is arrested or brought into custody, in order to bring the detention of the individual under judicial supervision and control and to prevent administrative detention. It will then be for the judicial authority to decide whether the detainee should be released on bail or not.

22. The Supreme Court has also made it clear, in Hossen v. District Magistrate of Port Louis (1993) MR 9, that since the Constitution specifies that a suspect must be released unless brought to trial within a reasonable time, the Court may, irrespective of the Bail Act, release a detained person if it can be shown that the authorities responsible for inquiring into an offence are procrastinating.

23. Where the magistrate decides that there are satisfactory grounds to prolong the continued detention of the suspect, the magistrate shall order that the suspect be remanded to police custody and brought before him after 10 days to review the detention.

24. Section 10 of the Constitution (see annex 3) provides that where a person is charged with a criminal offence, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

Articles 7 and 8

25. The Criminal Code, the Criminal Procedure Act and the District and Intermediate Courts (Criminal Jurisdiction) Act contain provisions which enable the Director of Public Prosecutions (DPP) to take measures to prosecute cases of criminal offences which fall within the jurisdiction of the courts in Mauritius. Cases contemplated under article 7 are therefore submitted to the DPP for appropriate action. However, as already pointed out, it is a sine qua non condition that the offence must take place on Mauritian territory.

26. The notion of universal jurisdiction as provided under article 5 of the Convention is not applicable. Where an offence takes place outside Mauritian territory the Extradition Act 1970 lays down the procedures to extradite the offender. The relevant sections of the Extradition Act were dealt with in the initial report.

27. The law and practice of Mauritius are in conformity with paragraphs 2 and 3 of article 7.

Article 9

28. As pointed out in the initial report, the practice of providing assistance in all matters of crime, including cases of torture, has long been seen as an important objective. Assistance, including the supply of all evidence at the disposal of the reporting State necessary for the proceedings, is offered on an ad hoc basis unless regulated in a bilateral convention.

29. The request for legal assistance is normally acceded to if it is made on the basis of reciprocity. More important, however, the requesting State must recognize fundamental rights including the rights of due process.

30. On 24 August 1996 Mauritius signed the Protocol on combating illicit drug trafficking in the Southern African Development Community (SADC) Region. The Protocol was signed by all States members of SADC with a view to reducing and eventually eliminating drug trafficking, money laundering, corruption and illicit use and abuse of drugs through cooperation among enforcement agencies and reduction of demand through coordinated programmes in the region. Mauritius also ratified the Protocol last year.

31. A legal workshop was organized in October 1997 to oversee the implementation of the Protocol. Once the appropriate mechanism is established to promote mutual legal assistance among member States, it is hoped that the Protocol will be extended to cover all criminal activities affecting the region.

Article 10

32. The curriculum at the Police Training School already includes:

(a) Custody, interrogation and treatment of any individual subjected to arrest and detention;

(b) Use of minimum force in the arrest of the individual;

(c) The rights of the individual under the Constitution of Mauritius;

(d) The principles and procedures relative to the interview and interrogation of witnesses and detainees according to the Judges' Rules.

33. Police Standing Orders, instruction books and circulars relative to the conduct of police officers have recently been updated. Police Standing Orders form the basis of frequent lectures at change-of-duty parades and during weekly and monthly instruction classes held by gazetted officers. In addition, 134 police officers involved in the custody, interrogation and treatment of persons received special training from the Advisor to the Police Force in 1977 and 1998. Human rights will receive greater attention during the training of police officers. It is felt that awareness and understanding

of human rights should exist at every level of the police force. It is in that context that the Attorney-General's Office is working more closely with the Police Training School to achieve those objectives.

34. It is expected that a police officer, after completing an initial training course, will have sufficient knowledge of the guidelines laid down for the treatment of arrested persons and the procedures in relation to the questioning and recording of statements.

35. The police force is considering a review of its recruitment policy by introducing an evaluation scheme extended over a period of 15 days whereby recruits on joining the force, would be required to undergo a field training conducted by experienced police officers, assisted by psychologists, who would help to identify negative qualities of recruits which are likely to foster brutality and trigger irrational behaviour in moments of stress. In future, potential candidates for the police force will also have to undergo psychological tests to gauge their level of apprehension, control of temper and aggressiveness.

36. The treatment of detainees in the prisons of Mauritius is regulated by the provisions of the Reform Institutions Act and the regulations made thereunder. The relevant provisions are dealt with in the initial report.

37. As part of their training, prison offices are expected to be fully acquainted with the United Nations Minimum Rules for the Treatment of Prisoners. The prison authorities regularly seek assistance from the Attorney-General's Office to run courses on legislation governing prison administration. The Trainee prisons officers follow a course run by the prisons and correctional institutional department, which covers professional conduct and the code of discipline, the treatment of the offender, human growth and development as well as psychology.

Articles 11 and 15

38. The interrogation of a suspect and recording of statements from him must be carried out in strict compliance with the guidelines laid down in the Judges Rules and Administrative Directions to the Police on interrogation and the taking of statements (see annex 4). The interrogation must be carried out as soon as possible to prevent the person arrested from being exposed to unnecessary inconvenience. A suspect, by virtue of section 10 of the Constitution, is innocent until proven guilty.

39. The Rules provide that the interrogating officer is obliged to point out to the detainee prior to questioning that he is not obliged to answer any questions and to caution him that anything he said may be used in evidence against him. The interrogating officer must refrain from doing or saying anything that amounts to procuring a statement that cannot be said to have been made voluntarily. This includes use of force, inducement, mental or physical coercion and so on. A confession obtained in those circumstances is not admissible in a court of law. Counsel for defence would normally challenge the admissibility of the statements and cross-examine the

interrogator on the circumstances in which he recorded the statement. The trial judge would subsequently have to decide whether the recorded statement is admissible and, if so, what weight to give it.

40. It is worth mentioning that after completing inquiries into more serious offences, the police have to submit the case file to the office of the DPP. Where the DPP's office is not satisfied that the inquiry has been conducted in compliance with the procedures laid down, it may seek further clarifications from the inquiring officers to ascertain the reliability of the evidence before advising prosecution.

41. If it comes out that the statements recorded from an accused party have been obtained by the use of force, the police officers concerned will be suspended from the force and an inquiry will be instituted by a unit of the police force.

Article 12

42. If a case of torture is suspected, the police will start an inquiry and submit the results to the DPP. Where there is a possibility that the impartiality of the police may be questioned, the DPP may require, under section 64 of the District and Intermediate Courts (Criminal Jurisdiction) Act, a magistrate to proceed to where he has reasonable ground to believe that an offence has been committed. Furthermore, under section 64 (2) of the Act, in all criminal cases the DPP may also require from any magistrate or officer any further and additional information, inspection or examination or such other legal matters and proceedings as may be necessary.

43. Where death has occurred as a result of a suspected act of torture in prison or in police custody, the DPP may require a magistrate to hold a judicial inquiry into the cause of death, under section 111 of the District and Intermediate Courts (Criminal Jurisdiction) Act.

44. Under section 13F of the Police Act a police officer who has reason to suspect that a person has committed, or is about to commit, an offence which will endanger public safety or public order, may arrest that person and use such force as may be necessary. The force used must be reasonable and moderate. Where the officer has used force against persons in the exercise of his duties he must immediately report this use of force to his superior who may institute an investigation.

45. Recent figures in relation to reported cases of assault perpetrated by police officers on detainees in police cells detention centres and the action taken subsequently are as follows (1995-March 1998):

Number of cases reported	34
Number of cases classified	10
Number of cases in which prosecution has been advised by the DPP	4

Number of cases sub judice	4
Number of cases in which police officers were convicted	0
Number of cases dismissed by the court	0
Number of cases in which disciplinary action has been taken against police officers	0
Number of cases in which advice has been tendered for prosecution of complainant	2
Number of cases still under investigation	15
Number of cases pending advice from DPP	3
Number of cases in which the incriminated police officer was given a severe warning as advised by DPP	0
Number of cases causing incapacity for more than 20 days	0

Article 13

46. Provisions exist in the Police Standing Orders which require high-ranking police officers to visit and interview detainees to take note of any complaint which they may have.

47. The Police Information and Operations Room has a voice message system which is operational on a 24-hour basis and which allows members of the public to complain about the police or generally vent any grievance they may have on the phone without having to call personally at police stations.

48. In addition to the normal channels of complaints through the police, a person who alleges that he has been subjected to torture may seek redress by:

(a) Applying to the Supreme Court for redress under section 17 of the Constitution (see initial report);

(b) Petitioning the Ombudsman under section 97 of the Constitution;

(c) Seeking an administrative law remedy before the Supreme Court;

(d) Entering a private prosecution;

(e) Petitioning the National Human Rights Commission, once the Commission becomes functional.

49. It must be pointed out that the Ombudsman, like members of the judiciary, is independent of the Government. Section 101 of the Constitution states that, in the discharge of his functions, the Ombudsman shall not be subject to the direction or control of any other person or authority.

50. The Ombudsman may institute an investigation in response to a request but also on his own initiative. He may investigate cases of abuse of authority by a government department, the police force or a member thereof and the Mauritius Prisons Service amongst others. The Ombudsman may make such recommendations as he thinks fit after concluding his investigation. He shall send a copy of his report to the Prime Minister and to any minister concerned. The Ombudsman is also required by law to make an annual report to the President concerning the discharge of his functions which shall be laid before the Assembly.

Article 16

51. Please see observations made in relation to articles 10, 11, 12 and 13.

List of annexes*

1. Comments from the Indian Ocean Institute for Human Rights and Democracy.

2. The State v. Coowar 1997.

3. Chapter II - Constitution of the Republic of Mauritius.

4. Judges Rules and Administrative Directions to the Police.

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* These annexes are available for consultation in the files of the Office of the United Nations High Commissioner for Human rights.

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Addendum

MOROCCO*

[2 September 1998]

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* The initial report submitted by the Government of Morocco is contained in document CAT/C/24/Add.2; for its consideration by the Committee, see documents CAT/C/SR.203 and 204/Add.1 and 2, and Official Records of the General Assembly, Fiftieth Session, Supplement No. 44 (A/50/44), paras. 105-115.

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Introduction

1. The Kingdom of Morocco ratified the Convention against Torture in June 1993 and submitted an initial report in 1994. This year it is submitting its second periodic report on measures taken to implement its commitments, in accordance with the provisions of article 19 of the aforementioned Convention.

2. The Government of Morocco has noted the observations and recommendations made by the Committee when it considered the initial report. It reaffirms its openness to fruitful cooperation and constructive dialogue aimed at implementing the Convention.

3. During the last four years, Morocco's determination to promote human rights has been consolidated in a new revision of the Constitution (September 1996), whose preamble states that "aware of the need to set its action within the context of the international organizations of which it is an active and energetic member, the Kingdom of Morocco adheres to the principles, rights and obligations deriving from the charters of those organizations and reaffirms its commitment to human rights as they are universally recognized".

4. In April 1998, His Majesty the King appointed a new Government following the local and general elections held in Morocco at the end of 1997. In its investiture statement before Parliament, the Government clearly affirmed its determination to carry out a policy of promoting and protecting human rights in various areas and of strengthening the rule of law.

I. INFORMATION OF A GENERAL NATURE

A. Constitutional provisions

5. Morocco is a constitutional, democratic and social monarchy.

6. Legislative authority is exercised by Parliament which, since the revision of the Constitution in 1996, consists of two chambers: the Chamber of Representatives and the Chamber of Councillors. The members of the Chamber of Representatives are elected by universal direct suffrage. The Chamber of Councillors is elected by representatives of local communities, professional bodies and employees. The constitutional reform of 1996 enlarged Parliament's powers and made the Government more answerable to Parliament. Since 1992, parliamentary control has been increased through the new option to create parliamentary commissions of inquiry to gather information on certain events. The workings of these commissions were laid down in a fundamental law promulgated on 29 November 1995.

7. The judiciary is independent of the legislative and executive authorities. Judges are nominated by the High Council of the Magistrature and appointed by Dahir. The composition of the Council is laid down in the Constitution. It is made up of the King, who is its president, the Minister for Justice, who is the vice-president, and nine judges. Judges are subject to the magistrature's statutes. The High Council of the Magistrature ensures that guarantees on the promotion and discipline of judges are applied. Judges are irremovable.

8. The 1992 Constitution, revised in 1996, clearly affirms its commitment to respecting human rights in its preamble: "Aware of the need to set its action within the context of the international organizations of which it is an active and energetic member, the Kingdom of Morocco adheres to the principles, rights and obligations deriving from the charters of those organizations and reaffirms its commitment to human rights as they are universally recognized." This affirmation in the Constitution illustrates the importance that Morocco attaches to respect for human rights which, because they are enshrined in the Constitution, are all the more forcefully observed within the various organs of the State.

9. Title I of the Constitution (arts. 1 to 18) guarantees all citizens fundamental rights: equality before the law, equal political rights for citizens of both sexes, freedom of movement and of establishment in all parts of the Kingdom, freedom of opinion and expression in all its forms, freedom of assembly and association, and freedom to belong to any trade union or political organization. The right to education and to work, access to public functions and public employment under the same conditions for all citizens, the right to strike, the right to own property, and freedom of enterprise are also guaranteed.

10. Article 10 in the same title of the Constitution unambiguously sets out the principle of legality of offences and punishments and affirms the inviolability of the home, stating explicitly that "searches and inspections may be carried out only under the conditions and in the forms provided for by law". The principle of legality is formulated in such a way as to encompass not only the legality of offences and punishments, but also procedural legality: "No one may be arrested, detained or punished except in the circumstances and the forms provided for by law."

B. International Conventions

11. The Kingdom of Morocco is a party to most international conventions on human rights. These include:

The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, ratified in 1979;

The International Convention on the Elimination of All Forms of Racial Discrimination (1970);

The Convention on the Rights of the Child (1993);

The Convention on the Elimination of All Forms of Discrimination against Women (1993)

12. Morocco has also ratified the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, as well as the International Labour Organization Conventions No. 29 concerning Forced or Compulsory Labour and No. 105 concerning the Abolition of Forced Labour.

13. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified on 21 June 1993, was published in the Official Bulletin (No. 4440 of 19 December 1996).

14. Publishing an international convention helps to make it more widely known. However, this has legal consequences also, because it is the settled judicial practice of the Supreme Court that, when there is a contradiction between a domestic law and an international law, the latter prevails, provided that it has been published in the Official Bulletin (for example, decisions No. 49 of 1 October 1976, No. 5 of 3 November 1972 and No. 162 of 3 August 1979).

C. The authorities concerned

15. The authorities concerned are, first and foremost, those whose task is to promote and protect human rights - the Ministry responsible for human rights and the Advisory Council on Human Rights.

16. Since 1993, Morocco has had a Ministry responsible for human rights, whose remit includes:

Examining all legislative and regulatory texts in order to assess how they conform to human rights principles and to propose necessary corrections;

Identifying possible causes of non-observance or non-application of principles and rules relating to human rights and working to ensure that they are more stringently observed;

Proposing measures to help create and develop institutions capable of strengthening respect for and promotion of human rights;

Putting into practice all educational, pedagogical and other means for disseminating, promoting and consolidating human rights culture;

Strengthening dialogue and consultation with organizations directly or indirectly concerned with human rights.

17. The Advisory Council on Human Rights was created by Dahir in 1990. According to the text's explanatory introduction, the Council's objective is to ensure the highest degree of respect for human rights. Its role is to assist the sovereign in all matters concerning human rights. The Council is chaired by the first president of the Supreme Court; it is made up, first of all, of five Ministers (Justice, Foreign Affairs, Interior, Religious Endowments (Habous), Human Rights) and, secondly, of representatives of various civil organizations (political parties, trade unions, human rights associations, the Association of Moroccan Magistrates, the Moroccan Bar Association, university professors, the National Medical Association). The Council may also include individuals chosen for their expertise in human rights matters. The Council examines questions referred to it by its president, on which the sovereign wishes to consult it; it may, by its own initiative and if a two-thirds majority of its members so wish, also examine issues of which it feels the sovereign should be informed.

18. The authorities more specifically concerned with ensuring that the provisions of the Convention against Torture are respected are those which are assigned responsibility for criminal investigations under the Code of Penal Procedure, the judicial authorities, and prison administration officials.

19. Persons holding the rank of criminal investigation officer are listed in article 20 of the Code of Penal Procedure. They belong to the gendarmerie and the national police. They are responsible for reporting offences, gathering evidence and finding perpetrators, supervised by the Crown Prosecutor and the head of the prosecution service and monitored by the criminal chamber of the Appeal Court (art. 16, et seq. of the Code of Penal Procedure).

20. The judicial authorities ensure that criminal proceedings run smoothly. In accordance with the provisions of the Code of Penal Procedure, they are responsible for monitoring the criminal investigation department. They deal also with all acts detrimental to the freedoms and physical integrity of persons being prosecuted, in accordance with the provisions of the Penal Code and the Code of Penal Procedure.

21. The head of prison administration and rehabilitation at the Ministry of Justice is responsible for executing judicial decisions where a custodial sentence or measure is delivered.

D. Disciplinary measures and measures to increase awareness

22. The subject of human rights is taught in police and gendarme training colleges, as well as in military academies (see under article 10). The National Institute of Judicial Studies, responsible for training judges, also provides teaching on human rights, in addition to a course on professional ethics.

23. Police officers, gendarmes and, in general, all officials who exceed their authority in the course of their duties can be prosecuted and punished with disciplinary measures imposed by their superiors and also with penal measures if the action constitutes an offence.

24. At the Ministry of the Interior, from 1 January 1997 to 20 April 1998, 35 police officers of all ranks (from constable to commissioner) were brought to trial for various offences and acts exceeding their authority. During the same period, 266 other officials, from the rank of constable to that of commissioner, were subject to administrative penalties for unseemly or unsatisfactory conduct.

25. According to statistics compiled and published by the Ministry of Justice, from 1 January 1994 to the end of February 1998, 31 cases were brought against criminal investigation officers and State officials for violence and abuses committed in the course of their duties. These cases concerned:

20 police officers, including 1 divisional commissioner and 2 inspectors;

8 prefects (caids);

3 sub-prefects (khalifas);

3 gendarmerie chiefs;

1 deputy mayor (moqadem);

1 prison warden;

1 security officer.

The grounds for these cases were:

Assault and battery, use of violence: 15;

Arbitrary detention: 12;

Illegal search: 3.

Other charges were brought for:

1 instance of rape;

1 instance of invasion of privacy;

Several instances of abuse of authority.

The outcome of the cases was as follows:

3 cases resulted in a criminal conviction, one of which was the subject of an appeal to the Supreme Court;

1 case was dismissed;

1 case resulted in an acquittal;

The other cases are continuing.

II. INFORMATION RELATING TO ARTICLES 2 TO 16 OF THE CONVENTION

Article 2: Prohibition of acts of torture

26. The prohibition of acts of torture is, in the first place, laid down in the Constitution, article 10 of which states that no one may be arrested, detained or punished except in the circumstances and forms provided for by law. By referring to "forms provided for by law", the Constitution demands that, in criminal proceedings and sentencing, the rules stipulated by the Code of Penal Procedure be respected, especially during interrogations and imprisonment. This in itself constitutes a prohibition of torture.

27. The regulations set out in the Code of Penal Procedure (Dahir of 10 February 1959) fully respect the rights and dignity of the person being prosecuted. The introductory text to the Code, which was published at the same time, is absolutely clear on that point, stating that "only a penal

procedure which guarantees freedom of defence and which, in short, protects citizens against errors and abuses committed in society's name, is worthy of a free country".

28. While the presumption of innocence is not mentioned explicitly in any article of the Code of Penal Procedure, it can safely be said to form the basis of most of its provisions. This is emphasized also in the introductory text: "Presumption of innocence shall apply to all, both to those accused for the first time and to repeat offenders, whose previous offences may not, under any circumstances, be cited as proof of guilt".

29. A preliminary draft of the Code of Penal Procedure, prepared by the Ministry of Justice, was studied by the Advisory Council on Human Rights, which ensured that the text conformed to the principles contained in international instruments relating to human rights; it is due to be referred to Parliament in the near future. The draft version explicitly provides, in its very first article, that all persons are presumed innocent until their guilt is legally established during a public trial where all guarantees necessary for their defence have been assured. The same article states that the accused is given the benefit of any doubt.

30. The Penal Code allows for the punishment of possible violations of the integrity of a person being prosecuted, during his trial, or of a convicted person, while he is serving his sentence.

Article 3: Prohibition of the return, refoulement or extradition of a person to another State where he might be in danger of being subjected to torture

31. The entry of aliens into Morocco and their right to settle and reside there are governed by Dahirs and/or bilateral conventions. The main documents on this subject are the Dahirs of 15 November 1934 and 21 February 1951 on aliens working in Morocco and the Dahir of 16 May 1941 governing residence permits.

32. An alien may be expelled from Morocco either for not abiding by the conditions of entry, settlement and residence laid down in the legal provisions, or for committing a serious breach of public order. The alien's residence application may then be turned down or his permit withdrawn by decision of the Director-General of the Criminal Investigation Department, or he may be returned by decision of the governor, or he may be expelled by a decision made either by the Director-General of the Criminal Investigation Department or by the Minister of the Interior. Such measures are adopted by administrative decision and the alien can always appeal to the relevant administrative court for their annulment.

33. Morocco acceded on 7 November 1956 to the Convention relating to the Status of Refugees, dated 28 July 1951, and on 20 April 1971 to the Protocol relating to the Status of Refugees, dated 18 November 1966.

34. In accordance with these Conventions, any person requesting asylum because he is persecuted in his own country must report to the headquarters of the High Commission for Refugees in Casablanca. He may then submit an

application for refugee status to the Ministry of Foreign Affairs. When the person's case has been examined and his claims verified, and if the criteria set out in the Convention relating to the Status of Refugees are fulfilled, the person is granted refugee status and is issued with a residence permit specifying this status by the Director-General of the Criminal Investigation Department. In such cases, the issue of a residence permit is not subject to proof of income being produced, as is usually the case for aliens wishing to settle in Morocco.

35. The Dahir of 8 November 1958 relating to the extradition of aliens explicitly provides (art. 5, para. 2) that an extradition request is not granted if the crime or offence on which it is based is of a political nature or if the circumstances indicate that the extradition is politically motivated. Acts committed during a rebellion or civil war by one of the parties involved in order to further its cause are extraditable only if they are acts of extreme barbarity or vandalism prohibited by the laws of war and only when the civil war has ended.

36. Article 7 of the same Dahir further states that extradition requests are granted only on condition that the individual extradited is not prosecuted or punished for any offence other than the one on which the request is based.

37. The principle of refusing extradition for political offences is reiterated in the extradition agreements that Morocco has signed with different States.

38. Morocco's most recent extradition agreements (extradition agreement between Spain and Morocco signed on 30 May 1997 and extradition agreement between Portugal and Morocco in the process of negotiation) further provide that extradition is refused:

> If there is reason to believe that the person in question will be subjected to a procedure which does not afford the guarantees internationally considered to be essential for ensuring respect for human rights, or that he will serve his sentence in inhumane conditions;
>
> If there is serious reason to believe that the extradition request has been drawn up for the purpose of implementing a penalty or instituting proceedings based on considerations of race, religion, nationality or political opinion, or that the person is in danger of receiving worse treatment on account of one of those considerations.

39. Extradition is not applicable to Moroccan nationals and they may in no circumstances be exiled or banished from the territory of Morocco. Exile does not feature in the list of penalties and security measures provided for in the Penal Code; therefore, in accordance with the constitutional principle of legality of offences and punishments, no one may be exiled. In the Penal Code, there are certainly penalties or security measures which restrict freedom (for example, obligation to reside in a particular place, local expulsion) but in no way can they be likened to exile.

Article 4: Classification of acts of torture, attempts to commit torture and complicity in torture as crimes

1. Classification of torture as a crime

40. The Penal Code dates from 1962 and has not been amended since Morocco acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Although this Code does not provide for classifying torture, as defined in article 1 of the Convention, as a crime, several of its provisions permit the punishment of acts of torture (arts. 225 to 232, 259 and 436 to 440).

Assault and battery

41. Articles 400 to 404 of the Penal Code punish "anyone who commits assault and battery or other acts of violence against another person". Assault and battery and other acts of violence are punished in proportion to the injury caused. These punishments are summarized in the following table:

Injuries suffered	Nature of the offence	Punishment	Act involving premeditation, felonious intent or a weapon
No unfitness for work or unfitness of less than 20 days (art. 400)	Minor offence	One month to one year's imprisonment and/or a fine	Six months to two years' imprisonment and a fine
Unfitness for work of more than 20 days (art. 401)	Correctional offence	One to three years' imprisonment and a fine	Two to five years' imprisonment and a fine
Mutilation or any permanent disability (art. 402)	Crime	Five to 10 years' imprisonment	Ten to 20 years' imprisonment
Death (without intent to kill) (art. 403)	Crime	Ten to 20 years' imprisonment	Life imprisonment

Violence committed by an official

42. Article 231 of the Penal Code punishes any judge, public official, or law enforcement official who, without legitimate grounds, uses or orders the use of violence against persons in or in connection with the exercise of his functions. He is punished for such violence according to its seriousness, pursuant to the provisions of articles 401 to 403. However, the applicable penalty is increased as follows:

In the case of a minor or correctional offence, the penalty is doubled; in the case of a crime punishable by a prison sentence, the penalty applicable is life imprisonment.

Injuries suffered	Nature of the offence	Punishment	Act involving premeditation, felonious intent or a weapon
Unfitness for work of more than 20 days (art. 401)	Correctional offence	Two to six years' imprisonment and a fine	Four to 10 years' imprisonment and a fine
Mutilation or any permanent disability (art. 402)	Crime	Life imprisonment	Life imprisonment
Death (without intent to kill) (art. 403)	Crime	Life imprisonment	Life imprisonment

43. Article 400 of the Penal Code provides that:

> "anyone who commits assault and battery or other acts of violence against another person, if the violence has caused no illness or unfitness for work, or if it has caused illness or unfitness for work of less than 20 days, shall be punished by one month to one year's imprisonment and a fine of 120 to 500 dirhams or by one of those two penalties alone".

The only legitimate grounds are self-defence or employing lawful measures to apprehend an accused or convicted person or to keep him at the authorities' disposal.

44. Article 224 of the Penal Code gives a very broad definition of officials as "all persons who, in some capacity, have a paid or unpaid function or mandate, even a temporary one, and who work in that capacity for the State, public administration, local authorities, public institutions or other public services".

45. Holding a position of legal authority, which is considered a justification overriding offences under article 124, paragraph 1, of the Penal Code, does not justify violence in such cases, since the text states very clearly that those who "use or order the use of violence" are punishable. Therefore, the person who gives the order and the person who carries it out both incur punishment.

2. Attempt

46. According to the Penal Code (arts. 114 et seq.), an attempt consists of the commencement of the commission of the offence, or unambiguous acts which are directly intended to commit the offence and which were interrupted or

failed to achieve their aim because of circumstances beyond the perpetrator's control. It is always punishable in the case of crimes; in the case of minor offences, it is punishable only by virtue of a special provision of the law. Attempt is treated and punished in the same way as the completed offence.

47. In the case of assault and battery, since an offence which has only been attempted has, by definition, remained without consequence, it is impossible to know the nature of the incapacity which would have been caused and, consequently, whether it would have been a crime or a minor offence. Since the law is silent on attempted assault and battery, the latter is therefore not punishable.

48. However, attempted assault and battery can always be punished as an act of violence which has not caused incapacity (art. 400). Punishable violence includes not only physical violence directly inflicted on a victim without causing incapacity, but also acts which, without any physical contact, are likely to impair the victim's physical integrity because of the emotional or psychological shock experienced. (For example, threatening someone with a revolver, or even menacing behaviour which causes the victim to try to escape by jumping out of a window, can be considered as such an act.)

49. Thus, according to case law, "an act of violence does not necessarily imply direct and violent physical contact with the victim and may be characterized by an action or attitude likely to cause acute fear or intense distress in the victim". Admittedly, the penalty is only correctional (one month to one year's imprisonment and/or a fine), but it is one which may be imposed.

3. Complicity

50. Under the Penal Code (arts. 128 to 131), all those who have personally taken part in an offence are considered to be co-perpetrators. All those who, without participating directly in an offence, have deliberately caused it to be committed or provided means or assistance for it, are considered to be accessories. Complicity in both minor offences and crimes is always punishable. Complicity in assault and battery and lesser acts of violence is always punishable.

Article 5: Extension of Moroccan jurisdiction

1. Jurisdiction over offences committed in Morocco

51. Moroccan criminal law is of territorial scope, as provided for in article 10 of the Penal Code: "All persons in the territory of the Kingdom, whether nationals, aliens or stateless persons, shall be subject to Moroccan law, except as otherwise provided by internal public law or by international law". This principle of territoriality is also established by the Code of Penal Procedure, article 748 of which provides that Moroccan courts are competent to try all offences committed in Moroccan territory, regardless of the perpetrator's nationality. The commission of the principal offence in Moroccan territory gives Moroccan courts jurisdiction, even if some elements of the offence were committed abroad and regardless of the nationality of the co-perpetrators.

52. Moroccan territory includes Moroccan ships and aircraft, wherever they may be, except if they are subject to the law of another country, in accordance with international law (article 11 of the Penal Code, articles 749 and 750 of the Code of Penal Procedure).

2. Jurisdiction over offences committed abroad

53. In Book VII of the Code of Penal Procedure, entitled "Jurisdiction over certain offences committed outside the Kingdom and relations with foreign judicial authorities", a chapter is devoted to jurisdiction over offences committed outside Morocco (arts. 751 to 756); a distinction is made here between Moroccans and foreigners.

54. Acts of torture committed abroad by Moroccans may be tried by the Moroccan courts. All acts classified as crimes or offences by Moroccan law and committed outside Morocco may be prosecuted and tried in Morocco, except that prosecution and trial may take place only when the offender has returned to Morocco, if he cannot prove that he has irrevocably been tried abroad and, if he has been convicted, that he has served his sentence, that his sentence is time-barred or that he has been pardoned. In the case of an offence against a private individual, proceedings may be instituted only on the motion of the Prosecutor's Office acting on a complaint by the injured party.

55. Moroccan courts do not have jurisdiction over foreigners. This follows from article 755 of the Code of Penal Procedure, which recognizes the jurisdiction of Moroccan courts for offences committed by aliens outside Morocco only in the case of a crime against Moroccan State security or the counterfeiting of coins or notes that are legal tender in Morocco.
Article 701 of the draft Code of Penal Procedure provides for the jurisdiction of Moroccan courts over crimes committed by an alien outside Morocco, when the victim of the crime is of Moroccan nationality.

Article 6: Arrest and detention of any person suspected of having committed an act of torture

56. Given the rules of jurisdiction laid out under the previous article, a person suspected of an act of torture may be prosecuted, in accordance with the rules of the Code of Penal Procedure, in the following cases:

If the act of torture was committed in Moroccan territory;

If the act was committed abroad by a Moroccan, provided that he was not the subject of a final judgement which has been executed.

In these two cases the person being prosecuted is entitled to all the guarantees granted by the Code of Penal Procedure, at all stages of the proceedings (investigation, arrest, imprisonment, gathering evidence, judgement, judicial remedy).

57. In other cases (acts of torture committed abroad by an alien), the person may be placed in detention:

If he is the subject of an extradition request which fulfils the conditions laid down in the Dahir of 8 November 1958 on the extradition of aliens or, where an extradition agreement exists between Morocco and the requesting State, the conditions laid down in that agreement. In these cases, the person is entitled to the guarantees laid down by the Dahir on extradition, notably the possibility of requesting release on bail (art. 14);

If there is an agreement on mutual legal assistance between Morocco and the State requesting the arrest.

Article 7: Trial or extradition of any person suspected of an act of torture

58. When the Moroccan courts have jurisdiction over an act of torture, the rules laid down by the Code of Penal Procedure for prosecution and trial are applicable, regardless of the nature of the offence and the nationality of the person being prosecuted.

59. Where the offence is classified as a crime, examination proceedings are compulsory if the penalty applicable is death or life imprisonment and optional if the penalty applicable is less severe. Crimes are judged by the criminal chamber of the Appeal Court, a collegiate court consisting of a president and four co-magistrates.

60. Lesser offences come under the jurisdiction of the court of first instance, which is made up of a president and two co-magistrates.

61. The forms of evidence are the same, regardless of the offence being tried. This is laid down in the Code of Penal Procedure, article 288 of which states that offences can be proved by any form of evidence and that the judge makes a decision based on his personal conviction. If he considers that adequate evidence has not been produced, the judge declares the defendant not guilty and acquits him.

Article 8: Classification of acts of torture as crimes for the purposes of extradition treaties

1. Dahir on extradition

62. When there is no bilateral treaty, the Dahir on extradition of 8 November 1958 lays down the conditions, procedure and consequences of extradition. The text does not refer explicitly to acts of torture. However, it defines extraditable acts broadly enough to encompass acts of torture. Specifically, under article 4 of the text, the following acts may give rise to extradition, whether it is being requested or granted:

(i) All acts punishable by criminal penalties under the law of the requesting State;

(ii) Acts punishable by correctional penalties under the law of the requesting State, when the maximum penalty incurred under that law

is two years or more or, in the case of a convicted person, when the sentence handed down by the requesting State's court is two months' imprisonment or more.

63. Extradition is granted only if the act is punishable by a criminal or correctional penalty in Morocco. Acts constituting attempt or complicity are subject to the same rules, provided that they are punishable by the law of the requesting State and by that of the State of which the request is made.

2. Extradition agreements

64. The provisions of the Dahir of 1958 are applicable, as article 1 clearly states, only "if there are no provisions to the contrary arising from treaties".

65. The extradition agreements concluded by Morocco since the ratification of the Convention against Torture refer explicitly to acts of torture. As is the rule in extradition matters, they provide that political offences may not give rise to extradition and state that the following may not be considered as political offences:

Genocide, crimes against humanity, war crimes, and serious offences under the Geneva Conventions of 1949;

Offences set out in article 1 of the European Convention on the Suppression of Terrorism, opened for signature on 27 January 1977;

Acts set out in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly of the United Nations on 17 December 1984.

66. These agreements further provide that extradition may be refused "if there is reason to believe that the person in question will be subjected to a procedure which does not afford the guarantees internationally considered to be essential for ensuring respect for human rights, or that he will serve his sentence in inhumane conditions". Extradition can also be refused "if there is serious reason to believe that the extradition request has been drawn up for the purpose of implementing a penalty or instituting proceedings based on considerations of race, religion, nationality or political opinion, or that the person is in danger of receiving worse treatment on account of one of those considerations".

Article 9: Mutual legal assistance between States parties in any proceedings relating to acts of torture

67. Morocco has signed a number of agreements on mutual judicial assistance with different States.

68. Since the ratification of the Convention against Torture, agreements on mutual legal assistance refer explicitly to acts of torture in the same terms as extradition agreements. Since mutual legal assistance can be refused for political offences, the agreements state that "acts set out in the Convention

against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly of the United Nations on 17 December 1984", are not considered as political offences.

69. These agreements also provide that mutual assistance can be refused "if there is serious reason to believe that the extradition request has been drawn up for the purpose of implementing a penalty or instituting proceedings based on considerations of race, religion, nationality or political opinion, or that the person is in danger of receiving worse treatment on account of one of those considerations" and "if granting the request is likely to result in a violation of the person's rights and fundamental freedoms".

70. These provisions are included in the agreement on mutual legal assistance signed with Spain on 25 February 1997 and the agreement currently being negotiated with Portugal.

Article 10. Education and information regarding the prohibition of torture

71. In recent years, there has been a new concern to incorporate education on human rights into university courses, and debate on the subject has begun. This was an issue discussed at a meeting organized by the Law Faculty of Casablanca, in collaboration with the Konrad Adenauer Foundation, on 25 and 26 April 1997, on the topic "Education and research on human rights". As regards instruction, a general discussion on the content of human rights courses and on teaching methods was begun; on the scientific front, the objective was to begin a long-term critical examination of the state of education and research on human rights and to discuss suitable methodological approaches.

72. In universities, human rights teaching is still done mainly by introducing the human rights perspective into disciplines which naturally lend themselves to it; as yet, no separate discipline has been introduced into university programmes. However, some other institutions have already taken this step.

73. The National Institute of Judicial Studies, an establishment for training and retraining judges, which is under the supervision of the Ministry of Justice, incorporated a separate discipline entitled "Human Rights" into its programme three years ago. The new discipline introduced is intended to deal with the different international human rights conventions, their content and their enforcement mechanisms. The Convention against Torture, therefore, forms part of this teaching. The Ministry of the Interior's training college, where senior officials are trained, has also introduced a human rights module into its course. The training college of the Gendarmerie Royale and the college for refresher courses for the Gendarmerie Royale have introduced lectures on human rights topics into their training. The Royal Military Academy runs a course in international human rights protection (Human Rights and International Humanitarian Law) for officer cadets. The subject of human rights is also taught at the Royal Police College to all new recruits, as well as to junior and senior officers during refresher courses.

74. In order to ensure broad dissemination of the principles contained in international human rights instruments, the Ministry responsible for human rights is compiling, with European Union support, a compendium of all the international conventions ratified by Morocco, including the Convention against Torture. This compendium will be intended for all parties concerned with human rights, particularly the authorities, human rights NGOs, training colleges and establishments, etc. The text of the Convention has been widely published by the press, NGOs and specialized publications, including the Police Review which is aimed at all police officers. Also, to improve judges' training, they take part in international meetings and seminars on human rights, organized both in Morocco and abroad. These include, for example:

The seminar on implementing international human rights standards in national legislation, organized by the International Commission of Jurists and the Moroccan Organization for Human Rights (OMDH), in Rabat from 1 to 4 October 1997;

The seminar on the role of justice in human rights protection, organized by the International Federation of Human Rights, the OMDH, the Moroccan Association for Human Rights, and several other NGOs from the Mediterranean region, in Casablanca in February 1998.

75. Finally, it should be noted that, in April 1998, the Ministry responsible for human rights and the office of the United Nations High Commissioner for Human Rights signed a memorandum of intent to create a human rights training and documentation centre in Morocco.

Article 11: Measures to prevent acts of torture during interrogation, detention and imprisonment

1. Police custody

76. Police custody is the detention of a person by the criminal investigation department for the purposes of the investigation. The rules laid down by the Code of Penal Procedure (arts. 68 to 70 and 82) are aimed primarily at setting time limits and preventing them from being exceeded, and at putting referrals to police custody under the supervision of the courts, in order to preserve the suspect's freedom and integrity.

77. Police custody is limited to 48 hours; the period may be extended by 24 hours by written authorization of the Crown Prosecutor. In cases of violation of State security, the time limit is 96 hours and can be extended once. When these periods have expired, the person must be released or brought before the prosecutor. In the context of rogatory commissions (art. 169), the custody period is 24 hours and can be extended to 48 hours by written authorization of the examining magistrate, to whom the person must be presented in order to obtain such an extension.

78. To ensure that these time limits are observed, the Code obliges all criminal investigation officers to indicate, in the record of the statement made by the person held in custody, the date and precise time that the custody period begins and ends. The criminal investigation officer is also required to inform the family of any person whom he decides to hold in police custody.

He is required to submit a daily list of persons held in police custody during the previous 24 hours to the Crown Prosecutor and the Crown Attorney-General (article 69, as supplemented by Act No. 67-90, promulgated on 30 December 1991).

79. When the period of custody ends, the suspect is handed over to the judicial authorities (the Crown Prosecutor or the examining magistrate). In order to prevent and, as appropriate, punish violence which could be inflicted on the person held in custody, the judicial authorities are required to present him for a medical examination if they are requested to do so, or on their own initiative if there are signs that a medical examination is warranted (articles 76 and 127 of the Code of Penal Procedure).

80. Criminal investigations are carried out under the supervision of the Crown Prosecutor and the head of the prosecution service and are monitored by the criminal chamber of the Appeal Court. This monitoring is stipulated in articles 244 to 250 of the Code of Penal Procedure. In accordance with these articles, any criminal investigation officer who does not observe the law's requirements may be suspended or stripped of his rank of criminal investigation officer, and may incur disciplinary or even criminal penalties if his conduct constitutes a criminal offence (for example, violence or arbitrary detention).

81. The Penal Code imposes the punishment of civic dishonour (a criminal penalty) on judges, public officials, law enforcement officials or representatives of public authority who order or carry out an arbitrary act which violates the individual freedom or civil rights of one or more citizens (article 225 of the Penal Code). Moreover, it stipulates the same penalty for public officials, law enforcement officials and representatives of public authority responsible for policing or criminal investigation who have refused or neglected to respond to a claim of illegal and arbitrary detention, either in establishments or premises allotted for holding detainees or anywhere else, and have failed to inform their superiors thereof (art. 227).

82. Circular No. 526 of 3 December 1996 notes the role of government prosecutors in monitoring custody and urges them to visit places of detention to ensure that the legal rules are being respected.

83. Another circular, No. 896/3, dated 27 August 1997, encourages prosecutors to act immediately in the event of a death on police premises. It recommends in particular that an autopsy should be carried out by a forensic scientist or a medical committee, that an investigation should be opened and that any official suspected of violence or torture should be prosecuted.

2. Pre-trial detention

84. Pre-trial detention is imprisonment during examination proceedings, when the circumstances make it necessary (if there is a risk of the accused absconding or of witnesses being intimidated). The Code of Penal Procedure (arts. 152 et seq.) specifies that it is "an exceptional measure". The reason for regulating it is to impose time limits, so that a person presumed innocent is not imprisoned for too long a period, with all the drawbacks which that may entail.

85. Pre-trial detention is possible only in the case of a crime or offence punishable by a custodial penalty. A warrant must be issued for it and it must also be preceded by interrogation as to the identity of the person concerned who must be informed of the charges against him and of his right to receive assistance from a lawyer. The person's lawyer has the right to attend the interrogation.

86. Pre-trial detention may not last more than two months. If continued detention appears necessary at the end of this time, the examining magistrate may extend it by a special substantiated court order, based on reasoned arguments by the Crown Prosecutor. A maximum of five extensions, each for the same period of time, may be made. If the examining magistrate decides not to bring the accused to court, he is released as a matter of right and the examination proceedings continue.

87. In cases of flagrante delicto, if the person is under a detention warrant, he must be brought before the court within three days (article 395 of the Code of Penal Procedure). In the case of a flagrant crime, if examination proceedings are not compulsory and the case seems ready to be tried, the person is placed under a detention warrant and must be referred to the trial court within 15 days at the latest. If the case is not ready to be tried, examination proceedings are opened (article 2 of the Dahir of 28 September 1974).

88. During the examination proceedings, if a person arrested by virtue of an arrest warrant is detained for more than 24 hours in a local prison, he is considered to be arbitrarily detained. Any judge or official who has ordered or knowingly tolerated such detention is liable to the penalties laid down for arbitrary detention (article 141 of the Code of Penal Procedure). The same rule applies to arrest and detention warrants, the time limit for which is 48 hours (art. 149). A detention warrant which places the accused in pre-trial detention may not be issued until after questioning by the judge.

89. The president of the criminal chamber of the Appeal Court monitors and supervises proceedings instituted in all the examining departments of the Appeal Court. He ensures that proceedings are not subject to any delays. To that end, during the first 10 days of each quarter of the year, every examining magistrate submits a list of all cases in progress to the head of the prosecution service, noting for each one the date of the latest action taken in the examination proceedings. In cases of pre-trial detention, he may visit any prison under the jurisdiction of the Appeal Court to check on the situation of an accused person in detention. If he finds the detention to be unjustified, he makes the necessary recommendations to the examining magistrate (articles 240 to 243 of the Code of Penal Procedure).

90. Several circulars from the Ministry of Justice, addressed to the first presidents of the Court of Appeal, the presidents of the courts of first instance and the prosecution service, stress the need to monitor the placing of persons in pre-trial detention, to make wider use of bail and to speed up proceedings in order to reduce the number of persons held in pre-trial detention (particular mention may be made of circulars Nos. 337 bis of 18 March 1991 and 10 of 6 January 1993).

3. Imprisonment

91. The rules set out in the Code of Penal Procedure aim to ensure the protection of persons held in prisons. Article 660 of the Code of Penal Procedure stipulates that detainees are to be inspected at least once every three months by the Crown Prosecutor and the examining magistrate.

92. Under article 661, a supervisory committee in each province or prefecture is essentially responsible for checking the health, safety, hygiene, diet and physical living conditions of detainees. The committee is chaired by the governor or his representative, assisted by the president of the court of first instance, the prosecutors from the courts of first instance and the regional chief medical officer or his representative. This committee or delegated members thereof are authorized to visit the prisons within the prefecture's territory. The committee communicates to the Minister of Justice any comments or criticisms it considers necessary and draws attention to any abuses which are to be halted, as well as any improvements to be made.

93. A guide prepared by the Ministry of Justice for the benefit of detainees, based on the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations, specifies in particular:

The detainee's right to medical examinations and health care;

The right of detainees in solitary confinement to be visited regularly by the in-house doctor; solitary confinement may not last more than 15 days, and any decision to extend it beyond that time is made by the central administration;

The right not to be put in a dark cell and not to be deprived of clothes, blankets or food;

The right not to be handcuffed, except when the person is in a dangerous state of agitation or is being transported outside prison;

The detainee's right to express grievances and to have them heard by the head of the institution, and to submit petitions to the inspection committee or the judicial authorities in respect of any measure he considers to be a violation of his interests;

The right to send letters in confidence to the head of the prison administration;

The detainee's right to complain to the head of the institution or to the central administration if he feels he has been maltreated or roughly handled.

Moreover, the text of the Standard Minimum Rules is displayed in prisons, in a place where prisoners can consult it freely.

94. It should be emphasized that a report on the state of prisons was submitted by the Advisory Council on Human Rights in 1997. This was the culmination of more than five years' work, during which Morocco's prisons were

visited in order to form a detailed picture of the state of each institution and to draw up legislative recommendations, as well as recommendations on the running of the institutions, staff training and improving detainees' living conditions.

95. A circular from the Ministry of Justice, dated 12 September 1997 and distributed to the presidents of the Appeal Court and the courts of first instance and to government prosecutors, urges them to pay particular attention to the situation of prison inmates, to improve respect for the rules on prison visits and inspections, and to inform the Ministry about these areas.

96. A law on prisons will be submitted to Parliament in the near future. It has been studied by the Advisory Council on Human Rights, which has ensured that it conforms with international conventions on human rights and the Standard Minimum Rules.

(a) Overall data on prisons

97. There are 42 prisons in Morocco, distributed over the whole of its territory as follows:

2 prison complexes;

1 central prison;

4 prison farms;

35 civil prisons.

98. However, despite the Moroccan Government's efforts to construct new prisons and renovate existing ones, the prison administration still faces the problem of overcrowding: the number of prisoners rose from 17,419 in 1976 to 46,853 in 1996, an increase of 186.98 per cent.

99. The prison administration is made up of:

4,475 officials (including 368 in administration and 4,089 in prisons);

113 doctors;

230 nurses.

(b) Reform of prison policy

100. The Ministry of Justice is pursuing a policy aimed at humanizing the prison environment so as to bring it more closely into line with international conventions on human rights and the Standard Minimum Rules.

(i) Infrastructure

101. The expansion of prison capacity is designed, first of all, to guarantee human dignity and reinforce detainees' rights and, secondly, to keep detainees near their family environment, particularly in rural areas so that they can pursue occupational training in agriculture.

(ii) Training and education

102. The new penal policy aims to protect society through the rehabilitation and vocational education of detainees so that they can integrate easily into society when they are released.

103. The Ministry of Justice has concluded several partnership agreements with the Ministry of Vocational Training, the Ministry of Education and the Ministry of Youth and Sport, to allow detainees to benefit from national programmes organized by these departments. For example, at the end of the 1997-1998 academic year, certificates of basic or university education were awarded to 1,978 detainees.

(iii) Human resources

104. Prison administration staff play a crucial role in the success of any reform policy. For this reason, the Ministry of Justice has made it a priority to recruit high-level managerial staff and to draw up training and retraining programmes to encourage greater respect for international conventions and the Standard Minimum Rules.

105. In order to make staff more aware of the need to respect detainees' rights, the prison administration continually reminds its officials of the obligations deriving from the commitments entered into by Morocco and from the various laws and regulations in force. Punishments are imposed on prison administration officials whenever an abuse in the exercise of their functions is reported; for example, one official was sentenced to 10 years' imprisonment for assault and battery without intent to kill which nonetheless led to the death of a prisoner.

(iv) Legislation

106. In order to humanize detention conditions and adapt domestic legislation to the provisions of international human rights instruments, the Ministry of Justice has taken the following action:

A draft penal code has been prepared containing provisions aimed at humanizing custodial punishments. This includes alternative penalties;

The Ministry of Justice is working in close collaboration with the General Secretariat of the Government to draw up a law and a decree governing prisons.

The Ministry is ensuring that this law conforms to international human rights instruments.

Article 12: Investigation into the commission of an act of torture

107. The Crown Prosecutor and the examining magistrate are required to present for medical examination any person brought before them at the end of his custody period, if the person so requests, or on their own initiative if there are signs that the person may have been subjected to violence (articles 76 and 127 of the Code of Penal Procedure, as amended in 1991).

108. If the suspicions of violence are confirmed by the medical examination, it is the responsibility of the prosecution service to instigate proceedings against the criminal investigation officer suspected of violence. Articles 244 to 250 of the Code of Penal Procedure stipulate the procedure to be followed. Any dereliction of duty by criminal investigation officers is brought to the attention of the criminal chamber of the Appeal Court by the head of the prosecution service or by its president. The criminal chamber may also act on its own motion when examining any case referred to it. Once a case has been so referred, it orders an investigation on the submission of the prosecution service, and hears the officer accused, who is entitled to have access to his file and to be assisted by a lawyer.

109. Without prejudice to any disciplinary measures which may be taken against a criminal investigation officer by his superiors, the criminal chamber may inform the officer of its findings, suspend him or strip him of the rank of criminal investigation officer. If it considers that he has committed a criminal offence, it refers the case to the prosecution service for appropriate action.

Article 13: Right of victims to lodge complaints with the competent authorities

110. The victim may institute criminal proceedings, either by summoning the perpetrator of the violence directly before the court or, in the case of criminal violence, by presenting himself as a claimant for criminal indemnification before the examining magistrate. The procedure followed in these cases is determined by the provisions of the Code of Penal Procedure.

111. However, there are also non-judicial remedies which enable the victim's rights to be restored and the guilty to be punished. The Ministry responsible for human rights and the Advisory Council on Human Rights are open to complaints from any person who considers that his rights have not been respected. For complainants, this type of extrajudicial remedy has the advantages of simplicity and flexibility. Moreover, those who use this procedure are in no way debarred from subsequent recourse to the courts.

112. Within the Directorate for Consultation and Protection in Human Rights Matters at the Ministry of Human Rights, there is a Department for Receipt and Investigation of Complaints. If the complaint is ill-founded, the complainant is informed and is also told of the reasons for its rejection. If the complaint appears to be well-founded, but does not strictly relate to a violation of rights falling within the Ministry's competence (for example, in the case of a dispute between individuals), the complainant is given the necessary advice on how to resolve his problem through the appropriate channels. Finally, if a complaint which does fall within the Ministry's

competence seems to be well-founded, the case is investigated more fully. If it emerges from the investigation of the case that acts of torture have been committed against a person, the Ministry informs the authorities concerned and the Ministry of Justice so that the case can be pursued in the necessary way.

113. The Advisory Council on Human Rights also looks at complaints relating to violations of individuals' rights. It then requests the bodies concerned with these complaints to conduct inquiries so that, if the truthfulness of the complainant's allegations is established, his rights can be restored and that proceedings can be instituted if a criminal offence has been committed.

Article 14: Right of victims to fair compensation

114. The law does not stipulate a specific compensation mechanism for acts of torture. If such acts are proved, the victim may obtain compensation for material and moral damage suffered, by recourse to the rules on civil liability. The Code of Obligations and Contracts provides that "any act by a person who, without being authorized by law, knowingly and voluntarily causes material or moral damage to another, shall oblige the perpetrator to compensate for the damage" (article 77 of the Dahir containing the Code of Obligations and Contracts).

Article 15: Value of statements obtained under torture

115. The Code of Penal Procedure makes no provision for the nullity of confessions made under torture. However, this does not mean that such confessions have the slightest probative value, since article 288 of the Code of Penal Procedure provides that offences may be established by any type of evidence and that the judge makes a decision on the basis of his personal conviction. If he considers that adequate evidence has not been produced he declares the defendant not guilty and acquits him. Article 289 of the Code further states that the judge may base his decision only on evidence produced in court and discussed orally before him. A victim of torture may, therefore, present his claims at the trial and they will be discussed adversarily in court. The judge may, if necessary, request additional information. He may then dismiss a confession of guilt if any factors cast doubt on its truthfulness, and acquit if he is personally convinced of the defendant's innocence or if he considers that some doubt remains, since one of the fundamental rules relating to proof in criminal cases is that the accused is given the benefit of any doubt.

Article 16: Prohibition of other cruel, inhuman or degrading treatment or punishment

116. The Penal Code has a chapter devoted to crimes and offences violating the freedoms and rights guaranteed to citizens. One of its sections deals with "abuses of authority committed by officials against individuals" (arts. 224 to 232) and punishes:

> Judges, public officials, law enforcement officials or representatives of public authority who order or carry out an arbitrary act which violates the individual freedom or civil rights of one or more citizens;

Public officials, law enforcement officials and representatives of public authority responsible for policing or criminal investigation who have refused or neglected to respond to a claim of illegal or arbitrary detention;

Supervisors and wardens in prisons or other establishments allotted for holding detainees, who accept a prisoner without a lawful detention order;

Judges, public officials, law enforcement officials or representatives of public authority who, acting in that capacity, enter an individual's home against his wishes.

117. The Code contains provisions regarding for attacks on a person's honour or reputation (arts. 443 et seq.). Under these articles, the following are classified as crimes:

Injurious behaviour, which is defined under article 443 as the use of "any offensive expression, term of contempt or invective which is not based on any fact"; it is punished under the Press Code (Dahir of 15 November 1958) by up to three months' imprisonment and/or a fine if the insult was made publicly, and by a fine alone if it was not made publicly (art. 48);

Defamation, defined under article 442 of the Penal Code as "any allegation or imputation of a fact prejudicial to the honour or reputation of persons or entities to which the fact is imputed", is punished under the Press Code (arts. 45 to 51).

118. The Penal Code punishes threats also. Article 429 punishes all threats of attack against another person. The threat is punishable only if it is made under certain circumstances.

119. Attacks on individual freedom and the inviolability of the home are also punishable (arts. 436 to 441). Kidnapping, abduction and hostage-taking are punishable by the death penalty if the person abducted, arrested, detained or kidnapped has been subjected to physical torture.

Conclusion

120. The Moroccan Government reaffirms its determination to work towards strengthened mechanisms for the protection of human rights. It is aware that this is a long-term task which requires medium- and long-term policies aimed at continued harmonization of domestic laws with international standards, and at training on, and improving awareness of, human rights protection, particularly in the case of officials responsible for applying the law.

121. This determination was clearly expressed in the new Government's investiture statement in April 1998. Bills on legislative harmonization are to be presented to Parliament very shortly; these include a bill to amend the Penal Code and one on the laws governing prisons.

122. Finally, an interministerial committee has been set up to supervise the harmonization of national legislation with international conventions ratified by Morocco. Another ministerial committee has been given responsibility for examining and resolving outstanding cases raised by national and international NGOs working in the field of human rights.

123. Moreover, various measures have been taken to increase civil society's involvement in efforts to strengthen the rule of law.

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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Second periodic report of States parties due in 1998

Addendum

ARMENIA*

[15 June 1999]

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* The initial report submitted by the Government of Armenia is contained in document CAT/C/24/Add.4/Rev.1; for its consideration by the Committee, see documents CAT/C/SR.245 and 246, and Official Records of the General Assembly, Fifty-first Session, Supplement No. 44 (A/51/44), paras. 84-101.

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Introduction

1. This report is submitted in accordance with article 19, paragraph 1, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was ratified by the Republic of Armenia on 9 July 1993 and entered into force on 23 September 1993.

2. Armenia's report on the application of the provisions of the Convention has been drawn up on the basis of information received from the Ministry of Justice, the Ministry of Internal Affairs and National Security, the Court of Cassation and the Office of the Procurator-General.

3. Since the presentation of its initial report, Armenia has been carrying out far-reaching legislative reforms aimed at providing legal guarantees concerning respect for individual rights and fundamental freedoms.

4. The Constitution of the Republic of Armenia was adopted on 5 July 1995. Chapter II (arts. 14-48) is headed "Fundamental human and civil rights and freedoms". It sets forth the right of everyone to life (art. 17).

5. Under the Constitution, "until such time as it is abolished, the death penalty may be prescribed by law as an exceptional punishment for particularly heinous crimes". The draft of the new Penal Code[1] provides for the abolition of the death penalty and a general moderation of other penalties. The current Penal Code prescribes the death penalty for a number of heinous crimes (for instance, in articles 59, 60, 99 and others).

6. Article 19 of the Constitution lays down that "No one may be subjected to torture or to cruel or degrading treatment or punishment. No one may be subjected to medical or scientific experiments without his or her consent."

7. The legal system and the regulations governing the operation of judicial institutions lay down conditions conducive to the effective prevention of any resort to torture or other inhuman or degrading treatment in the territory of the Republic of Armenia.

8. Under article 92 of the Constitution, the courts of general jurisdiction are the courts of first instance, the appeal courts and the Court of Cassation. Economic, military and other types of court provided for by law may be established in the country. The establishment of extraordinary courts is forbidden.

9. Armenia has subscribed to and ratified 43 international human rights treaties and conventions, as well as 10 such treaties and conventions in the framework of the Commonwealth of Independent States (CIS).

10. Article 6 of the Constitution provides that "International treaties that have been ratified form an integral part of the legal system of the Republic. If such a treaty contains provisions which differ from those laid down in legislation, the provisions of the treaty shall apply."

11. The courts and the Procurator-General are the authorities competent to examine matters relating to the sphere of application of the Convention. A similar obligation is also borne by the police authorities responsible for the protection and security of citizens and, in particular, by the Department of Correctional Labour at the Ministry of Internal Affairs and National Security.

12. In accordance with the requirements of article 1 of the Convention, the elements of the offence referred to in article 126 ("Torture") in the draft of the new Penal Code essentially reflect the definition of "torture" set out in the Convention.

13. Article 126 in the draft of the new Penal Code stipulates that the use of torture is an offence. In contrast to the existing Penal Code, in which the concept of torture is not elucidated (art. 110), article 126 of the new Code establishes the offence of actions "involving the causing of suffering by means of periodic blows, or other actions involving force".

14. Under article 126, part 1, of the draft Penal Code, "Causing suffering by means of periodic blows, or other actions involving force, shall be punishable by deprivation of liberty for up to three years, if such action has not produced the consequences referred to in articles 119 and 120 ('intentional action causing grave consequences to health' and 'intentional action causing moderate harm to health')."

15. Under article 126, part 2, of the Penal Code, "such actions shall be punishable by deprivation of liberty for a period between three and seven years if they are committed (a) against two or more persons; (b) against a person or his or her relatives in connection with his or her performance of official duties or public duty; (c) against a minor, or a person who is materially or otherwise dependent on the offender, or against a person who has been kidnapped or a hostage; (d) against an obviously pregnant woman; (e) by a group of persons, by prior agreement; (f) in a particularly brutal manner; or (g) as a result of hatred based on nationality, race or religion or motives of religious fanaticism".

16. It is noted in article 126 of the draft Penal Code that torture covers not only physical but also moral suffering. The article provides for punishment in the form of deprivation of liberty for a period between three and seven years.

INFORMATION RELATING TO EACH ARTICLE OF PART I OF THE CONVENTION

Article 2

17. Article 9, part 3, of the Code of Penal Procedure, entitled "Respect for rights, freedoms and individual dignity", provides that "during criminal proceedings no one must be subjected to degrading treatment or be held in humiliating conditions". Article 9, part 4, lays down that "it is forbidden to oblige anyone to participate in proceedings which are degrading".

18. Under article 11, part 7, of the Code of Penal Procedure, "no one must be subjected to torture, unlawful physical or psychological pressure, including that involving medical means, hunger, exhaustion, hypnosis, deprivation of medical care or any other inhuman treatment". The same part of the article states that it is unlawful to obtain testimony "by means of force, threats, deception, violation of rights or any other unlawful actions".

19. Under articles 138 and 139 of the draft Penal Code, kidnapping, depriving individuals of their liberty or restricting it, when accompanied by threats to their lives or health, and also by the causing of suffering, are considered to be more serious offences than under the current Code.

20. Under article 45 of the Constitution, some human and civil rights and freedoms may be temporarily restricted, in accordance with the procedure laid down by law, in time of war or in the circumstances referred to in article 55, part 14, of the Constitution, which stipulates that the President "shall, in the event of immediate danger threatening the constitutional order, and following consultations with Chairman of the National Assembly and the Prime Minister, take the steps dictated by the situation and address the people on the subject". However, various articles are not affected by this provision, including article 19 of the Constitution, which prohibits the use of torture and other inhuman or degrading actions.

21. In this way, no exceptional circumstances, whether "a state of war, a war situation or any other public emergency", can serve as a justification for torture. Specifically, certain restrictions on rights and freedoms referred to in article 44 of the Constitution extend only to articles 23-27 of the Constitution and do not limit the validity of article 19 in any way.

22. Article 45 of the General Part and the corresponding articles of the Special Part of the draft Penal Code contain a provision whereby an order from a higher authority concerning the use of torture must be deemed to be unlawful, while criminal proceedings must be initiated against any person who has issued such an order or instruction. Although article 45, parts 2 and 3, contain no specific reference to the use of torture in carrying out a clearly unlawful order, this is nevertheless understood in the concept and wording of the article.

23. Under article 44, part 2, of the draft Penal Code, "Any person intentionally committing an offence when carrying out a clearly unlawful order or instruction shall be held criminally responsible."

24. Article 44, part 3, lays down that a person failing to carry out an order or instruction known to be unlawful shall not be held criminally responsible.

25. The draft Penal Code provides that officials bear responsibility for the misuse of their official position (art. 300) and exceeding their official authority (art. 301), while the most serious case is that where an offence is committed with the use of arms or special instruments or involves the use of force.

Article 3

26. In accordance with the requirements of the Convention, article 15 of the draft Penal Code establishes a procedure for extradition of persons who have committed an offence.

27. Under article 15, part 1, of the draft Penal Code, "citizens of Armenia who have committed an offence on the territory of another State are not subject to extradition to that State".

28. Article 15, part 2, of the draft Penal Code lays down that "foreign citizens and stateless persons who have committed an offence outside Armenia and are present on Armenian territory may be extradited to a foreign State for the purposes of criminal prosecution or to serve a sentence in accordance with international treaties entered into by Armenia".

29. On 27 September 1993 the Armenian Parliament adopted a decision to give the Procurator-General the right to sign extradition agreements with the procurators of other States. The procedure for the administrative eviction, expulsion and extradition of foreign citizens is governed by the Juridical Situation of Foreign Citizens in Armenia Act of 17 June 1994.

30. If the legislation of the State demanding extradition provides for the death penalty, the requesting State is required to give a guarantee that the death penalty will not be applied as a condition of extradition (Penal Code, art. 16, para. 3).[2]

31. Under article 16, paragraph 3, of the Penal Code, "no one may be extradited to a foreign State if there are serious grounds for believing that he or she risks torture there".[3]

32. Where the Armenian authorities refuse to extradite an offender who has committed an offence on the territory of a foreign State, criminal proceedings shall be pursued in accordance with Armenian legislation (art. 16, para. 4).

33. Under article 474 of the Code of Penal Procedure, the relations between courts, procurators, investigators and bodies conducting pre-trial investigations in Armenia and those in foreign States are founded on the provisions of international agreements for judicial assistance.

34. Under this provision, issues connected with extradition are governed by agreements concluded between Armenia and interested States. Armenia has signed bilateral agreements of this type with Bulgaria, Romania and Georgia.

35. Under Armenian legislation the articles of the Penal Code can be applied to Armenian citizens who have committed offences outside the country in cases where the acts they have committed are recognized to be offences in the State on whose territory they were committed, and where such persons have not been tried in the foreign State. When such persons are tried, the punishment applied cannot exceed the maximum penalty provided for in the legislation of the foreign State on whose territory the offence was committed.

36. Article 5 of the draft Penal Code provides that "all persons who have committed offences are equal before the law and face criminal proceedings irrespective of their nationality, race, sex, religion, political or other views, social origin and property or other status".

37. Under article 59 of the draft Penal Code, aggravating circumstances include the commission of an offence for reasons of hatred based on nationality, race or religion. Similar references appear in articles 148 and 228, as well as in other articles of the draft Code.

38. Article 19, part 1, of the draft of the new Code for the Execution of Criminal Penalties, which will enter into force following consideration and adoption by the National Assembly, replacing the existing Corrective Labour Code, contains a proposal that judicial supervision of institutions enforcing penalties should be enshrined in legislation, and notes that such institutions inform the court which sentenced each prisoner where he or she is serving his or her sentence.

Article 4

39. The draft Penal Code contains a separate section VIII which establishes "offences against individuals".

40. Aside from the Penal Code articles mentioned above, which directly prohibit the use of torture, other articles impose the ban indirectly. Article 9, part 1, for example, provides that "respect for the rights, freedoms and dignity of the individual is mandatory for all organs and participants in criminal proceedings".

41. The draft Penal Code contains a number of provisions which prohibit the use of unlawful means. For example, it is forbidden to detain anyone without lawful justification, or to exceed the period of detention stipulated in the law.

42. Under article 23 of the draft Penal Code, criminal prosecution of a person known to be innocent is an offence, punishable by deprivation of liberty for a period between 3 and 10 years.

43. Under article 328 of the draft Penal code, the use of force by a judge, a procurator, an investigator or a body conducting an initial inquiry in order to obtain testimony from a suspect, an accused person, a defendant, a victim or a witness is punishable under the criminal law. Part 2 of the article provides that aggravating circumstances include actions involving humiliation or torture or other actions involving force. A person committing this offence, if it has produced serious consequences, is liable to punishment in the form of deprivation of liberty for a period between 6 and 12 years.

44. Article 336 of the draft Penal Code provides that it is an offence for a judge to make a knowingly unjust ruling. Where the ruling related to the unlawful deprivation of liberty, or had serious consequences, this offence is punishable by deprivation of liberty for a period between three and eight years.

45. Under article 333 of the draft Penal Code, knowingly unlawful detention or knowingly unlawful remand in custody is a criminal offence, punishable by deprivation of liberty for a period of up to four years, or between three and eight years if it had serious consequences as a result of negligence.

Article 5

46. Under article 3, part 1, of the Code of Penal Procedure, "unless otherwise provided in international treaties entered into by Armenia, on the territory of Armenia, investigations are carried out in accordance with the articles of the Code regardless of the place where the offence was committed".

47. Under article 3, part 2, of the Code of Penal Procedure, "offences committed outside Armenia on board an aircraft or seagoing or river vessel lawfully flying the flag or a symbol of Armenia are to be investigated in accordance with the provisions of the Code".

48. Foreign citizens and stateless persons who have committed offences outside Armenia bear criminal responsibility under the Penal Code of the Republic when (a) they have committed an offence referred to in international treaties entered into by Armenia, or (b) the offence was directed against the interests of Armenia or its citizens, if they have not been tried in a foreign State and are the subject of criminal proceedings in Armenia (Penal Code, art. 14).

49. Issues involving the criminal responsibility of diplomats located on Armenian territory are governed by the 1961 Vienna Convention on Diplomatic Relations,[4] bilateral agreements and also articles 444-449 of chapter 51 of the Code of Penal Procedure, entitled "Special characteristics of proceedings against persons who enjoy privileges and immunities laid down in international treaties".

Article 6

50. The Code of Penal Procedure sets out in detail the procedure for instituting criminal proceedings (chap. 3), stipulating that "bodies conducting initial inquiries, investigators and procurators have an obligation, within the limits of their competence, to initiate criminal proceedings in any case where there is evidence that an offence has been committed, and to make use of all means provided for in the law to expose offences and those who have perpetrated them" (art. 27).

51. Article 128 of the Code lays down the procedure whereby a person may be detained, when: (a) "he or she is suspected of committing an offence which is punishable by assignment to a disciplinary battalion, short-term rigorous imprisonment, or deprivation of liberty for life or for a specific period", or (b) the accused has failed to comply with the preventive measures taken against him or her.

52. A person may be detained on the basis of: (a) "direct suspicion that he or she has committed an offence; (b) a decision taken by a body responsible for criminal prosecutions" (art. 128, part 3, of the Code). "The period of custody may not exceed 96 hours from the time of arrest. During this time, the person must be charged" (art. 129, part 2, of the Code).

53. Chapter 26 (arts. 188-201) of the Code lay down the procedure for the conduct of preliminary investigations.

54. "In the case of applications from judicial bodies or bodies responsible for criminal prosecutions in other States, and in the conduct of specific investigatory or judicial activities, the legislation of foreign States relating to criminal procedure may be followed if the international treaties entered into by Armenia so provide" (art. 3, part 3, of the Code).

55. The Constitution emphasizes that "Everyone has the right to liberty and the right to security of person. No one may be subjected to detention or search except as prescribed by law. A person may be detained only by court order and in accordance with the procedure laid down by law" (art. 18).

56. In every case in which a foreign national is held in custody, the diplomatic representatives of the country in question are promptly notified. The Armenian Code of Penal Procedure provides not only for the notification of a representative of the country concerned, but also for his or her presence.

Article 7

57. In accordance with article 15 of the draft Penal Code it has been laid down that "Citizens of Armenia who have committed an offence on the territory of another State shall not be extradited to that State." "Persons who have committed an offence outside Armenia, aliens who are present on Armenian territory and stateless persons may be extradited to a foreign State for the purposes of criminal prosecution or to serve a sentence, in accordance with international agreements entered into by Armenia."

58. The Procurator-General of Armenia has the right to revoke decisions taken by bodies conducting preliminary investigations.

59. Armenian legislation guarantees fair treatment at all stages of criminal proceedings. Specifically, "in criminal proceedings no one may be detained, subjected to a search, held in custody, tried, called for questioning or subjected to other forms of procedural coercion, or suffer other restrictions of his or her rights and freedoms, otherwise than on the basis of and in accordance with the procedure laid down by law" (art. 11 of the Code of Penal Procedure).

60. Article 8 of the Code of Penal Procedure provides that "all are equal before the law and shall be protected by the law without discrimination".

61. In all cases, the provisions of the Code of Penal Procedure are applied in such a way as to ensure that the person being prosecuted enjoys all the statutory safeguards at the stages of initial inquiry, investigation and judgement without any discrimination.

Article 8

62. Extradition is carried out on the basis of article 15 of the Penal Code, except as otherwise provided in international treaties.

63. The institution which receives the request has an obligation to extradite a person located on the territory of the State in question so that criminal proceedings may be brought or a court ruling enforced against that person (art. 480, part 1, of the Code of Penal Procedure).

64. Under article 480, part 2, "Extradition for the purposes of bringing criminal proceedings shall be carried out for acts which are punishable both in the requesting State and in the requested State by deprivation of liberty for a period of not less than one year."

65. Extraditable offences are those punishable, under the laws of the party submitting or receiving the extradition request, by a penalty of not less than one year's imprisonment. If the person concerned has already been sentenced to a penalty in the territory of the party requesting the extradition, extradition may take place where the said penalty is for a period of not less than six months' imprisonment.

Article 9

66. Article 477 of the Code of Penal Procedure provides for letters of request to be executed by a court, a procurator, an investigator or a body conducting initial inquiries. Under article 477, part 2, "in executing letters of request the procedural rules of foreign States may be applied if an international treaty concluded with that State so provides".

67. "In executing letters of request for which provision is made in international treaties, a representative of the appropriate institution of the State in question may be present" (art. 477, part 3).

68. After signing the Convention, Armenia and the CIS States signed the 1993 Minsk Convention on mutual assistance in civil, family and criminal proceedings and links between judicial bodies. The Convention deals, inter alia, with extradition issues. The parties undertake to extradite to one another, in keeping with rules set out in the Convention, persons who are facing prosecution in connection with an offence or being sought in order to serve sentences imposed by judicial bodies in the requesting countries.

69. The Code of Penal Procedure contains provisions permitting mutual legal aid among investigators and courts through international conventions.

70. It also contains provisions concerning foreign witnesses or experts summoned from abroad who appear voluntarily before the courts. It is not permissible to prosecute such persons, detain them or hold them in pre-trial detention for the offence forming the subject of the criminal proceedings (art. 476 of the Code of Penal Procedure).

Article 10

71. In Armenia human rights issues feature in the curricula for study, training and retraining of the staff of law enforcement agencies. Retraining courses are held periodically for staff of the Ministry of Internal Affairs and National Security. A course is currently under way on problems arising during criminal proceedings and application of the rules of the Code of Penal Procedure. Special attention is devoted to the issue of the inadmissibility of torture, and in particular the practice of using force to obtain statements from witnesses.

Article 11

72. The draft Penal Code modifies the conditions governing the imposition and enforcement of custodial penalties. It specifies the rights and obligations of accused persons, while, at the same time, respecting rules laid down by the United Nations, such as the segregation of detained

minors, women and perpetrators of offences by negligence, strengthening of the role of the judge and diminution of that of the procurator in relation to surveillance of prison conditions.

73. Questions concerning the procedure for, and duration of, custody, pre-trial detention and investigation and the time-limits for the lodging of appeals are regulated by the Code of Penal Procedure. Under article 62 of the Code of Penal Procedure the body responsible for criminal investigations is not entitled to detain a suspect for more than 96 hours. The duration of preventive measures cannot exceed seven days.

74. The draft Code for the Execution of Criminal Penalties regulates the application of security measures to prisoners. Under article 64 of the Code, "physical force and special instruments (handcuffs and straitjackets) or firearms may be used on prisoners if a convicted prisoner has manifested resistance towards a member of the Penalty Enforcement Administration, participated in mass disorder, taken hostages or attacked citizens".

75. Article 11, part 3, of the draft Code for the Execution of Criminal Penalties contains a provision (which is lacking in the current Corrective Labour Code) whereby "Prisoners cannot, even with their consent, be subjected to medical or other experiments which are dangerous to life and health."

76. In circumstances provided for in the law, "a court shall consider complaints from prisoners and other persons regarding the actions of institutions and bodies enforcing penalties" (art. 19, part 3, of the Code for the Execution of Criminal Penalties).

77. Under article 11, part 4, "Prisoners shall have the right to submit proposals, statements or complaints to the administrations of bodies enforcing penalties, higher bodies, courts, the procurator, other bodies in the State administration and public organizations, as well as to international intergovernmental and non-governmental human rights organizations if all domestic remedies have been exhausted."

78. Currently under preparation is a Police Act, chapter IV of which is devoted to the circumstances in which physical force, special instruments and firearms as well as means of individual protection may be used. Article 16, part 1, of the draft provides that "a police officer must give a warning concerning the use of a weapon, a special instrument or physical force, allowing sufficient time for lawful demands to be complied with and commission of the offence to cease, except in cases where refraining from their use would pose an immediate threat to the life and health of the police officer or could result in other serious consequences, or where the circumstances make the issue of a warning impossible".

79. Article 16, part 2, provides that "in the light of the situation, a police officer must strive to cause minimum harm", while under article 16, paragraph 3, "a police officer must provide first aid to persons who have suffered bodily harm as a result of his or her actions".

80. The Office of the Procurator monitors the lawfulness of pre-trial investigations. The cases are forwarded to the courts after the procurator has confirmed the indictment.

81. The conditions of pre-trial detention and the treatment of detainees are constantly monitored by the Ministry of Internal Affairs and National Security and the office of the Government Procurator-General.

82. Individuals are considered guilty after the corresponding guilty sentence has become final. An accused person has the right to be informed of the accusation against him or her, and also to make statements and furnish proof, and to have counsel (art. 10 of the Code of Penal Procedure).

Articles 12 and 13

83. Anyone claiming to have been subjected to torture or other inhuman or degrading treatment during the pre-trial investigation has the right to lodge a complaint with the Office of the Procurator. Any detainee who has suffered such treatment in places of detention has the right to lodge a complaint with the head of the administration, and also with the appropriate procurator.

84. A postal and telephone service known as "Trust" has been set up in each prison camp, where convicted prisoners can communicate directly with the head of the corrective labour institution and report on all infringements of their rights and freedoms. There is a two-way telephone link between convicted prisoners and their relatives - an unprecedented development in the CIS.

Article 14

85. In accordance with article 103, part 8, of the Code of Penal Procedure, "every convicted prisoner has the right, in conformity with international treaties entered into by Armenia, to contact the appropriate inter-State bodies for the protection of human rights and freedoms, if all means of legal defence provided for in the legislation governing criminal procedure have been exhausted".

86. Where torture or other degrading treatment is established to have occurred, the victim has the right to criminal indemnification for the harm sustained. Armenian legislation provides that anyone who has been unjustly convicted, detained or imprisoned is entitled to compensation. Specifically, under articles 66 and 67 of the new Code of Penal Procedure, a person unlawfully convicted and acquitted is entitled to compensation for unlawful pre-trial detention, remand in custody, prosecution and conviction.

87. The compensation for such persons is intended to cover: (a) restoration of salary and other forms of income; (b) reimbursement of court costs paid; (c) compensation for payment for counsel's fees; (d) compensation for confiscation or sequestration of property and any fine paid during execution of the sentence.

88. An acquitted person is entitled to recover fully his or her job and grade, housing and other rights.

89. Under article 67 of the Code of Penal Procedure, a judge, procurator, investigator or person conducting an inquiry must make clear to an acquitted person his or her right to receive compensation for unlawful conviction, pre-trial detention and remand in custody, as well as his or her other rights.

90. On 14 June 1994 the Armenian Parliament adopted the Victims of Repression Act, under which conviction on political grounds, unlawful conviction, the use of medical methods and deportation are deemed to be repressive measures.

91. The Act restores citizenship, honours and/or citizen's rights to those who suffered from such repression during the Soviet era. In particular, the Act grants various benefits - free utilities, free transport, housing loans on favourable terms, etc. - to persons who were victims of repression during the Soviet era, as well as their families.

92. This Act lays down a procedure for compensation and restoration of civil and political rights for the victims of repression during the Soviet era.

Article 15

93. Chapter XII of the Code of Penal Procedure is devoted to protection of persons involved in criminal proceedings.

94. In accordance with article 98 of the Code of Penal Procedure, on the obligation to take steps to protect victims, witnesses, accused persons, defence counsel and other participants in criminal proceedings, it has been laid down that the adoption of protective measures is mandatory if a person taking part in criminal proceedings or his or her close relatives are threatened with physical violence or destruction of property. A decision to take protective measures is taken promptly - no later than 24 hours after the threat has been notified.

95. The Code of Penal Procedure regulates in detail issues relating to questioning of witnesses, participants in proceedings, suspects and accused persons.

96. Citizens have the right to lodge with a higher body, and also with the office of the procurator and the courts, complaints concerning the use of torture or other cruel, inhuman or degrading treatment against them.

97. Among means of protection for victims, witnesses, accused persons, defence counsel and other persons participating in criminal proceedings, mention should be made of an official warning by the court or the procurator concerning the possibility of prosecution of anyone who threatens to use force or other actions forbidden under the criminal law (art. 99 of the Code of Penal Procedure).

98. Under article 105, part 1, of the Code of Penal Procedure, material obtained by means of the use of force, threats, deception, personal humiliation or other unlawful acts may not be used as evidence.

Article 16

99. The draft Penal Code includes a special chapter, chapter 17, devoted to offences directed against life and health, which defines homicide, driving a person to suicide, intentional harm to health, beatings, etc. as offences, as well as a chapter containing provisions for the protection of the human and civil rights and freedoms set out in the Constitution (chap. 20).

Notes

[1] The Special Part of the new Penal Code of Armenia has been passed in second reading by the National Assembly (Parliament), while the general part has been passed in third reading.

[2] Has passed its second reading.

[3] Has passed its second reading.

[4] Ratified by Armenia on 6 October 1992.